UNITED STATES SUPREME COURT.

No. 206.

UNITED STATES *ex rel.* REBECCA W. WOLFF, PLAINTIFF IN ERROR,

VERSUS

THE MAYOR AND ADMINISTRATORS OF THE CITY OF NEW ORLEANS, DEFENDANTS IN ERROR.

Relator, Rebecca W. Wolff, was the owner and holder of certain bonds issued by the City of New Orleans, under an act of the General Assembly of the State of Louisiana, passed in the year 1854, in aid of the "New-Orleans, Jackson, and Great-Northern Railroad Company."

Vide Sessions Acts of 1854, page 72.

On or about the 30th day of March, 1876, in the Circuit Court of the United States, Fifth Circuit, District of Louisiana, she obtained an

absolute and final judgment against the City of New Orleans, upon the bonds aforesaid, for $13,000, with six per cent interest, from the first day of May, A. D. 1874, until paid, upon $9000, and interest at the like rate, upon $4000, from the first day of January, 1875, with costs and expenses of suit.

A writ of fieri facias was issued upon the judgment thus obtained, and having been placed in the hands of the U. S. Marshal for execution, that officer, in due course, returned the writ into court *nulla bona*. Thereupon, relator, under Act No. 5, of the Sessions of the General Assembly of Louisiana, enacted in the year 1870, caused her judgment to be filed in the office of the Administrator of Accounts of said city; and, it was registered by that officer, upon the date on which it was presented.

After the filing and recordation aforesaid, the municipality took no steps to meet the payment of the registered judgment thus held by relator, and she formally called upon the Mayor and Board of Administrators to provide for such payment.

Notwithstanding relator's demand, the City of New Orleans, and the Mayor, and several Administrators thereof, neglected and refused to comply therewith; and she found herself entirely powerless to enforce a collection of her judgment, in whole and in part, except by the aid of the court, acting through a writ of mandamus.

Relator then commenced the present proceedings; and, in her petition, she prayed for a writ of mandamus, commanding the Mayor and several Administrators aforesaid, to assemble in Council, and pass an ordinance or resolution, *levying a special tax* upon all the real and personal property lying or being within the corporate limits of the City of New Orleans, liable to taxation, for the purpose of paying relator's judgment aforesaid—principal, interest, and costs; to provide, in said ordinance, for the collection of such tax, in a prompt and expeditious manner; and therein fully to secure the immediate application of the *special tax* aforesaid, to the object and purpose for which the same might be levied and collected. Also, directing and requiring the Mayor and several Administrators of the said city, when assembled in Council as aforesaid, in addition to the ordinance or resolution levying *a special tax,* and providing for its collection and payment, as aforesaid, by another ordinance or resolution, to be passed or adopted for that purpose, to amend the municipal budget at that time existing, and thereafter to be adopted, so as to include and place upon such amended and further, or other, budget, or estimate of receipts and expenditures, the judgment held and owned by relator, as aforesaid, or the unpaid portion of such judgment, in order that the said judgment, or the amount remaining unpaid, or due thereupon,

might stand, and be regarded, as a judgment liability and expenditure of the City of New Orleans, until the amount of such judgment, or the sum remaining unpaid thereon, shall have become fully paid and extinguished; to levy and impose "*a budget tax*," under and by virtue of the estimate of receipts and expenditures hereinbefore referred to, upon any and all property herein above designated, and upon any and all property, contemplated by such budget or estimate to be levied and assessed, in a way and manner, and to an amount sufficient, to pay off and discharge what ever sum may then be due and, owing upon relator's aforesaid judgment; and, to provide for the collection of, and to collect, *such budget tax* without unreasonable delay; and with the monies or tax thus collected, to pay and satisfy, as promptly as the nature of the case will admit of, and without laches or negligence, the entire amount which, at the time, may remain due and owing to relator, under her aforesaid judgment against the City of New Orleans.

Vide printed Record, pages 1, 2, and 3.

By way of return to the alternative writ of mandamus, the City of New Orleans admitted, that relator had recovered judgment against her; that an execution had issued; and that the same had been returned no property found.

And for further return, respondents averred; that said judgment was recovered for the principal of certain bonds, of $1000 each, issued by the City of New Orleans, to the New-Orleans, Jackson, and Great Northern Railroad Company, under the authority of the Act of the Legislature of Louisiana, No. 9, approved March 15, 1854; that no tax whatever, for the payment of the principal of said bonds, is directed to be levied or collected by said act, or by any other act of the Legislature, or provision of law * * * . And, forasmuch, as the laws of Louisiana have directed no tax to be levied or collected to pay the principal of said bonds, that respondents are wholly without authority to levy and collect such tax, and they have no duty to perform in the premises.

Vide Record, pp. 3 and 4.

His Honor, Judge Billings, acting as Circuit Judge, rendered the following judgment:

"This cause having been submitted on the pleadings and proof herein filed, it is ordered, adjudged, and decreed, that the said defendants, the Administrators, Mayor, etc., of the Common Council of said city, exercise the discretion vested in them, according to section 3, of Act No. 5, of the acts of the year 1870, to appropriate from the money set apart in the budget or annual estimate for "*contingent expenses*" a sufficient sum to pay the judgment herein; but, that if no appropriation be

made by the Common Council of said city, the said judgment shall be paid, according to its priority of filing and registering in the office of the Comptroller, from the first money next annually set apart for that purpose. *Provided, that nothing herein contained, shall require the said Common Council to assess or levy any tax, upon said city, for the payment of said judgment, until the Legislature of the State of Louisiana shall authorize the same.*"

Record, page 11.

The judgment thus rendered, directed the Mayor and Administrators, to exercise the discretion vested in them, by section 3, of act 5, of the year 1870, in reference to the use of the "*Contingent Expense Fund;*" and required relator's judgment to be paid, according to its priority of filing and registering, from the first money next annually set apart to pay judgments; but, in its proviso, the judgment of Judge Billings deprived relator of the *only* means through which her budgeted judgment might be rendered exigible.

She, therefore, has appealed from that judgment, to this Honorable Court.

The Error of the Judge a quo lies in his refusal ~~Error~~ to allow a Jury.

In U. S. *ex. rel.* Morris Ranger vs. the City of New Orleans, decided not long since, your Honors distinctly held, that a tax will legally lie, to pay a judgment rendered against the City of New

Orleans, upon the principal of her bonds, issued in aid of the New Orleans, Jackson, and Great Northern Railroad Company, under Act 109 of the sessions of 1854; and, in that case, this Honorable Court directed a mandamus to issue, commanding the municipal authorities of New Orleans to levy *a special tax*, for the payment of Ranger's judgment.

In the State of Louisiana *ex. rel.* Morris Ranger vs. the City of New Orleans—in error to the Supreme Court of the State of Louisiana, decided at the October term of 1880, this Honorable Court recognized the validity of Act 5 of 1870; and inferentially decided, that if the Ranger judgment could not otherwise be collected, a mandamus would lie, to coerce the levy and collection of *a budget tax*, with a view to the payment of that judgment.

The books are full of authorities, to the effect that a mandamus will lie to compel a municipal corporation to levy a tax for the payment of a judgment standing against it, which cannot otherwise be realized; but, as the cases of Morris Ranger, above cited, are so applicable and pointed, and so decisive of the present litigation, we think it unnecessary to refer to other precedents, to sustain relator's demand for a tax. She holds a judgment against the city of New Orleans; and IT OUGHT AND MUST BE PAID.

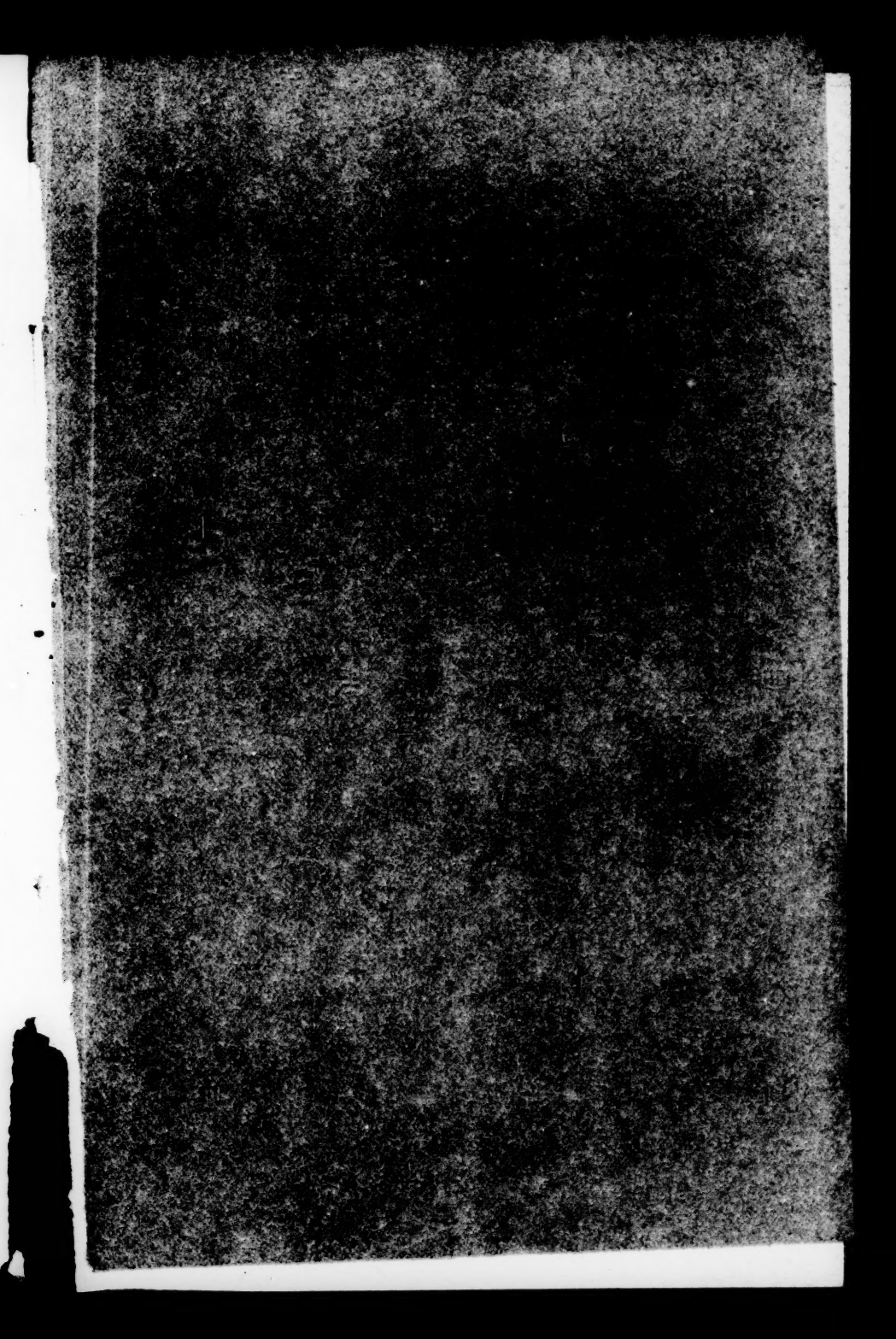
We respectfully ask your Honors, to *reverse* the judgment of the lower court, so far as it refuses to

require the Common Council of New Orleans to assess or levy any tax for the payment of relator's judgment, until the Legislature of the State of Louisiana shall authorize the same; and, *to supplement and amend* that judgment, by directing a mandamus to issue, commanding and requiring the corporate authorities of the city of New Orleans to provide for the payment of relator's judgment, in their municipal budget; for that purpose, to levy and impose a budget tax, to collect such tax, and to apply the same, when collected, to the purpose for which the tax was imposed—thus carrying out the provisions of act 5, of 1870; or, commanding and requiring respondents to levy *a special tax* with a view to the payment of the judgment underlying relator's application for a mandamus.

All of which is respectfully submitted,

GEO. S. LACEY,

of Counsel.



SUPREME COURT U.S.
FILED
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JAMES H. McKENNEY, Clerk

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THE UNITED STATES, EX REL., REBECCA W. WOLFF,
PLAINTIFF IN ERROR,

vs.

THE CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

Brief for Defendant in Error.

B. F. JONAS,
HENRY C. MILLER,
of Counsel for the City of New Orleans.

L. Graham & Son, print, 127 Gravier st.

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THE CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

Brief for Defendant in Error.

STATEMENT OF FACTS.

The relator, Rebecca W. Wolff, the plaintiff in error here, applied to the Circuit Court of the United States, for a writ of mandamus, to compel the city to pay, or to place on its annual budget and to levy a tax to pay, the amount of a judgment recovered by the relator against the city, on which execution had been returned, unsatisfied. (Record, page 1.) The relator, prior to the application, had recorded her judgment under the Registry Act, to be noticed further along, and her petition alleges that registry.

The answers of the city, to the application for the writ averred, that there were no funds in the treasury, set apart in the budget, for the satisfaction of the judgment, nor was there any contingent fund, out of which the judgment could be paid, and the answer denied, that the relator had any right to the levy of a special tax to pay the judgment. Answer, Record, pages 5–6.

The statutory provisions of the law of Louisiana, upon the subject, of the frame of the annual budget of the expenses of the city, and the Registry Act, providing the mode of obtain

ing payment of judgments against the city, are to be found in the city charter of 1870 (session Acts, pages 39, S. 18 and 19), and in the Act No. 5 of 1870 (Session Acts, page 10).

The 18th and 19th sections of the city charter of 1870, required, that in December of each year, the City Council should levy taxes upon all real and personal property, and adjust the rates of licenses for the ensuing year; at the same time it was required, that a budget be made, exhibiting the various items of liabilities and expenditures for the ensuing year, to be paid from the budgeted receipts and expenditures, the rate of taxation to be levied by the city for all purposes, being at the time limited to one and one-half per centum. (See Acts 1870, pages 38–9, § 18–19, amended by Act of 1876, page 56.)

The Act No. 5 of 1870, the Registry Act alluded to already, prohibited executions against the city; provided for the registry of judgments; for their payment out of money appropriated for judgments in the budget, if sufficient; empowered the council in its discretion, to appropriate from the contingent fund, provided in the budget, to pay the judgment, and if no such appropriation was made, then the judgment was to be paid in the order of its registry, and out of the first money next annually set apart in the budget for the purpose. The provisions in the Act in this connection, being,—

Section 2d, "final judgment against the City of New Orleans, condemning said corporation to pay any sum in money, when the same shall have become executory, shall have the effect in law of establishing and fixing the amount of the plaintiff's demand, against said corporation, and the plaintiff may cause a certified copy of said judgment, together with a copy of the plaintiff's petition, and the defendant's answer in the cause in which said judgment is rendered, together with the certificate of the Clerk of said Court, that such judgment is final and executory, to be filed in the office of the Controller in said city; and it shall be the duty of the Controller, or auditing officer of said corporation, to receive the same, and cause the same to be registered in his office, of the date on which the same shall have been presented, and when so registered it shall be the duty of the Controller to

warrant on the Treasurer or disbursing officer of the corporation for the amount due thereon, without any special appropriation of money therefor by the Common Council; *provided, always*, that there be sufficient money in the treasury to pay such judgment specially designated and set apart for that purpose in the annual budget or detailed statement of items of liability and expenditure required to be made by the one hundred and twenty-fourth section of the Act of the Legislature, entitled 'An Act to consolidate the City of New Orleans, and to provide for the government of the City of New Orleans, and the administration of the affairs thereof,' approved March twenty, eighteen hundred and fifty-six, or such laws as may hereafter be enacted relating thereto."

SEC. 3. *Be it further enacted, etc.*, That in case the amount of money designated in the annual budget, for the payment of judgments, against the City of New Orleans, at the date when any judgment against the said corporation shall have been final and executory, shall have been exhausted, the Common Council shall have power, if they deem it proper, to appropriate from the money set apart in the budget or annual estimate for contingent expenses, a sufficient sum of money to pay said judgment or judgments, but if no such appropriation be made by the Common Council, then all judgments shall be paid in the order in which they shall be filed and registered in the office of the Controller, from the first money next annually set apart for that purpose.

The 4th section gave an action of damages to the judgment creditor, against any officer of the city who delayed or obstructed the payment of the judgment, in the mode provided by the Act (Acts 1870, Session Acts, p. 10).

It thus appears, that under the legislation of the State, in accordance with which, the relator registered this judgment, there was no provision for a special tax to pay the judgment, and as demanded by the relator. The rule of the statute, was payment from the specific appropriation, *if* sufficient, or payment from the contingent fund, *if* deemed proper by the Council or otherwise, out of the first money next annually, provided in the budget. But as that provision, had to be made from taxa-

tion, limited for all purposes, judgments included, to one dollar and fifty cents, and on every one hundred dollars of valuation, the amount on the budget, had necessarily to be restricted, because the amount of the public taxes necessary, to carry on the government, not susceptible of seizure or diversion (1st Dillon on Municipal Corporations, p. 184), had to be provided, out of that limited taxation, that is, the budget had to exhibit all items of necessary expenditure of the current year, to be paid from the revenues of that year (Act 1870, S. 19 appendix). It was foreseen, that the appropriation for judgments in any year, might prove insufficient, but in that event, the law did not permit increased taxation, or the displacement of other items in the budget, but the direction of the Act, was that the judgment creditors were to receive payment in order, and out of the first money next annually appropriated on the budget. No judgment creditor could, under the terms of the Act, claim that his judgment should be paid absolutely, for that payment depended on the conditions announced in the Act. Nor could any judgment creditor, insist upon an appropriation on the budget for any fixed amount, for the provision was controlled, by the limit of taxation and the amount of necessary expenditure, to sustain the government. The amount for judgments to be appropriated annually, thus was to be fixed by the discretion of the Council, in framing the budget: the discretion was to be guided by the limit of taxation for all purposes, and the amount required for police, lights, paving streets, public schools and other necessary expenses, of maintaining the corporate existence and the discharging of its functions.

The Circuit Court dealing with the application of the relator, in so far as it sought relief under the Registry Act of 1870, gave him the relief allowed by the Act. There was no money in the treasury, for the satisfaction of judgments. Answer to writ, page 4. The Court followed the statute, the benefit of which relator had invoked, and decreed that the Common Council exercise the discretion, vested in them by the 3d section of the Act, and appropriate

from the money set aside in the budget for contingent expenses a sum sufficient to pay the relator's judgment, but if no appropriation was made, then the judgment should be paid according to its order of registry, from the first money next annually set apart for the purpose. See judgment, Record, page 11. But the judgment refused the special tax demanded by the petitioner.

So far then, as the Act of 1870 is concerned, under which the relator recorded her judgment, the judgment of the lower Court gives all the relief consistent with that Act. It is because the relator, is not willing to wait payment in order as the Act prescribes, that this case is here. And see writ of error, Record, pages 11–12.

The judgments of the relator were recovered upon the bonds of the City of New Orleans, issued in aid of the New Orleans, Jackson and Great Northern Railroad, under the Act of 1854; the bonds run for 20 years, and bore 6 per cent. interest and for the payment of the interest upon the bonds, an annual tax was provided. But for the payment of the principal of the bonds, the provision was not taxation, but the application to the redemption of the principal, of the stock of the railroad, obtained, by the subscription of the city. It was contemplated by the Legislature, that the stock would prove valuable, and be an adequate provision for the ultimate payment of the bonds. Indeed, it was anticipated, that dividends on the stock would be paid before the maturity of the bonds, in which contingency the Act provided, that whenever the dividends should equal the six per cent. interest on the bonds, the tax for interest should then cease, and the excess of dividends over the amount required to pay the interest, should be applied to purchase the bonds issued under the Act. In accordance with the theory, that the shares of the capital stock subscribed for, and the dividends thereon, would serve as an ample provision for the payment of the bonds, and that it was necessary to provide a tax for the interest only, on the bonds until such period, as the dividends on the stock would commence, the legislative enactment, after providing for this limited tax for interest, was "that the city bonds issued to said railroad company, shall be

" received by it at its par value, and said company shall issue " to the City of New Orleans therefor, certificates of stock, "for an amount equal to the amount of the bonds received, *and* " *the stock of the company thus issued to the city, shall re-* " *main forever pledged for the redemption of said bonds,*" provided that any holder of bonds should be allowed to convert his bonds into stock on surrender of the bonds.

In April 1, 1870, the Legislature of Louisiana directed the Governor to sell the stock of the railroad. (Acts 1870, approved by Henry C. Warmoth, Governor, appendix). The sale was made: the pledge for the bonds was diverted to other purposes, and the bonds ariving at maturity in 1874, four years ofter, were and are still unpaid.

In the petition of relator for the mandamus, her right to the tax, is placed alone upon the ground, that she is a judgment creditor. And in that petition, she refers to the Act No. 5 of 1870, as the basis of her right. In the traverse of the answer, the relators set up the fact, that the judgment was recovered on the bonds, issued under the Act of 1854.

ARGUMENT.

The relator recorded her judgment against the city, under the Act No. 5 of 1870. The judgment of the Circuit Court, gives the relief prescribed by that Act—that is, it directs payment out of the first money next annually set apart for the purpose, Rec., p. 11. This Act has been sustained by the Supreme Court of Louisiana, as an Act which does not impair the obligation of the contract. See State, ex rel. Southern Bank, 31st Annual, page 21. Strauss vs. Brown, 30th Annual, page 79. It has been sustained by the decision of this Court in State, ex rel. Morris Ranger vs. the City of New Orleans, decided at this term. The relator, too, must be deemed to have elected the remedy afforded by the statute, and must abide by it. There is no basis exhibited in the record, to authorize this Court to set aside the reme ly afforded by the statute, and give to the relator other and more extended relief.

The relator conceives, that she is entitled to go outside of the Act No. 5 of 1870, and claim the levy of a tax, because the judgment was recovered, on bonds issued under the Act of the Legislature of Louisiana, approved March 15th, 1854. See appendix.

The proposition needs no elaboration, that the taxing power belongs to the legislative department of the government, and cannot be exercised by the judiciary. The writ of mandamus, is only issued to compel the levy of a tax to satisfy judgments on municipal bonds, when the legislature has directed the tax to be imposed. If no tax has been provided, for the payment of the bonds, on which the judgment is recovered, to grant the mandamus would be judicial taxation.

Heine vs. Levee Commissioners, 19th Wallace. p. 657;
Supervisors vs. United States, 18th Wallace, p. 77;
Rees vs. Waterton, 19th Wallace, p. 660;
Riggs vs. Johnson Cy., 6th Wallace, p. 192.

When these bonds of 1854, were issued, it was the law of Louisiana, that the police juries of the parishes and the authorities of incorporated towns and cities in this State, shall not hereafter have power to contract any debts or pecuniary liabilities, without fully providing in the ordinance creating the debt, the means of paying the principal and interest of the debt so contracted. See Acts 1853, Session Acts, p. 234, appendix.

In the charter of the city adopted in 1852, the same rule is announced, "From and after the passage of this Act * * no ordinance creating a debt or loan shall be valid. * * * * unless said ordinance shall provide the ways and means for the payment of the running interest during the whole time for which said debt or loan was contracted, and for the full and punctual discharge at maturity of the debt." (Appendix.)

The same rule of public policy was announced in the Constitution of 1852, with respect to debts contracted by the State; "Whenever the legislature shall contract a debt exceeding in amount one hundred thousand dollars, they shall, in the law

creating the debt, provide adequate ways and means for the current interest and the principal when the same shall become due, and the law shall be irrepealable until principal and interest shall be fully paid." Coustitution, article 111.

The City of New Orleans, issued the bonds, of the class sued upon in this case, in accordance with the legislative authority. The legislative act, followed the rule of making provision, for the payment of the principal and interest of the debt. The act directed the tax for the interest: it made other provision for the principal, by setting apart the stock of the railroad company, declaring it should stand as a pledge, for the principal of the bonds. Nor is the act wanting in significance, that the legislature appreciated, that in setting apart the stock, it was making abundant provision for the bonds, to the exclusion of any taxation. It was anticipated, that in the course of a few years, the dividends on the stock would more than suffice for the interest, and the provision in the act was, that the interest tax itself should cease, as soon as the dividends sufficed for interest. Manifestly, then, the legislation contemplation was, that the stock would be an adequate provision for the payment of the bonds. The legislative intent in that respect, is strengthened by the rule of legislation announced in the city charter: the general statute: and incorporated in the Constitution itself, with reference to debts incurred by the State, and followed by the legislature, when it came to authorize the issue of bonds in question here. It made provision for them. It designated for the interest, taxation for a limited period: for the principal it provided no taxation, but made other provision clearly evincing the legislative appreciation, that such provision was all sufficient.

Now, can it be affirmed that this legislation authorizes a tax for the principal of these bonds? There is no express authority. Where is the ground for the implication, that the Legislature of 1854, intended taxation for the principal? True, the provisions of 1854, made for the principal, completely failed—by the legislative action of 1874, diverting the stock from the purpose for which it was pledged. (See Act of 1874, in Appendix.) But what pertinence has this legislative diversion of

1874, to do with the solution of the intention of the Legislature of 1854. That Legislature never contemplated the diversion of 1874. It made no provision for so extraordinary a contingency. The enactment and intendment of 1854, was that the stock should stand a pledge for the bonds, until their complete extinction. There is no light shed backward, from the transaction of 1874, upon the intention of the Legislature, that directed the issue of these bonds, and made provision for them. That legislative intent is to be sought in the Act of 1854, and the issue is, is there in a line of that legislation, the trace of the legislative purpose, to give or to authorize at any time, or under any circumstances, taxation to be levied for these bonds. We ask this Court to scan this legislation, of 1854, for the basis of an implication, that the legislative Act, contemplated, and intended taxation for these bonds. The fact, that provision is made for the principal of the bonds, other than taxation, carries a significance, the mind cannot resist. It obviously intends, that should be the provision, and not taxation. It is difficult to appreciate the reasoning that the Legislature intended taxation to be levied, because it made other provision for the bonds, and withheld taxation. Can this Court, with the distinct recognition, that the judiciary has no power to compel the levy of a tax, except where the Legislature has directed the tax to be levied, find the direction or warrant for that tax in this legislation of 1854? A clear implication, that the proper department of the Government intended taxation, though not expressed except by necessary inference, is doubtless as satisfactory to the judicial mind, as the enactment in words, that a tax shall be enforced. But where, in this case, is the basis for that implication, is submitted to the appreciation of this Court. Is not the prohibition of the taxation, for the principal, the manifest implication.

Is the significance of the special provision for these bonds, as excluding taxation, weakened by the suggestion, that it is unreasonable to suppose, that the Legislature intended to strip the bond of value, by withholding taxation—in the event of the special provision proving ineffective? Is not the complete answer to this suggestion, that the Legislature of 1854, mani-

festly, did not contemplate or dream of that insufficiency—as plainly exhibited in every line of that legislation. Is the legislative intention to direct this tax, to be deduced from the hard condition, in which it is supposed the bondholder will be placed, if the tax is not accorded to him. Must not the act of 1854 speak for itself, and carry its natural significance, wholly irrespective of the condition and consequences, supposed to be connected with that condition, not foreseen by the legislation, this Court is now called on to interpret. It often happens that corporate obligations, are unpaid, with no power in the judiciary to order the tax. Such was the case in Heine vs Levee Commissioners, 19th Wallace, 655, and United States vs. Macon Cy., 99th United States Reports, p. 591. The judiciary has no commission to exercise legislative functions, for the relief of any class of corporation creditors. In those cases, this Court, could find in the legislation exhibited, no authority to direct the levy of the tax. The bondholder was left to seek his redress, at the hands of the legislative department, alone, competent to exercise the taxing power to pay the corporate debt left unprovided for. Is not the present such a case? If it could be maintained, that the legislature of 1854, had the forecast of the possible unsufficiency of the provision of these bonds, is it not the answer, that the insufficiency was not provided for, at all, but must be deemed to have been remitted, to future legislation? Or is it reasonable to hold, on a fair construction of the act of 1854, in view of that other and different provision it contains, that notwithstanding, taxation was intended to be the means of payment.

It has been maintained, that when the municipal corporation has an unrestricted power of taxation, that the legislative direction to exercise that power, for the payment of municipal bonds, will be implied, from the legislative authority to contract the debt, unless taxation is prohibited expressly or by implication. See Loan Company vs. Topeka, 20 Wall. 660. Parsons vs. City of New Charlestown, Hughes' Rep. p. 282.

But that line of authority, manifestly does not answer or in

the least do away, with the prohibitive significance of legislation, which does not omit provision, but on the contrary, sets apart means, for the payment of the bonds, other than taxation. The reasoning which discovers the legislative intention, that taxes are to be imposed, to pay municipal bonds, when, in the Act authorizing the debt, no provision *at all* is made for payment, must be deemed to fail, when it is attempted to imply the tax, from the fact that provision *is* made in the Act, and provision other than taxation. That other provision with its obvious significance against any taxation, is the case here.

It has also been held, that where bonds have issued with restricted taxation for their payment, that for any residue of the bonds, left unsatisfied by that taxation, the bonds were entitled to participate, in the general taxes of the county. See United States vs. Clark County, 96th U. S., p. 211. That decision proceeds upon the theory, that the special provision did not deprive the bondholder of all remedy, for the unpaid residue of his bond. But the demand of the relator, is for a special tax: she declines that participation given by the Act No. 5 of 1870, in the general tax which the city levies, and which the judgment of the Circuit Court secures to her. The relator here, wants more than the bondholder, for whom special provision was made, obtained in 96th U. S., for the residue of his bonds, unsatisfied by the special provision.

The power of taxation conferred on the city of New Orleans by its original act of incorporation of 1805, was conveyed in these terms: "The said Mayor and Aldermen, shall have power to raise by tax, in such a manner as to them may seem to them proper, upon the real and personal estate within said city, such sum or sums of money as may be necessary to supply any deficiency for the lighting, cleansing, paving and watering the streets of said city; for supporting the city watch; the levee of the river; the prisons; the workhouses, and other public buildings; and for such other purposes as the police and good government of the said city may require." Act 1805. (See appendix.)

The power of taxation thus conferred, manifestly refers to

ordinary purposes of corporate expenditure. The subsequent legislation of 1836 and of 1852 carried the original power of taxation, and the corporation was declared to be endowed with the powers incident to Municipal Corporations. See Acts 1836, § 4. Sess. Acts, p. 31, Act, 1852. Sess. Acts p. 42. 485, 1, 22. In the legislation of 1856, and of later years down to 1876, there are limitations upon the taxation, levied by the city for all purposes. In 1856, the limit was one and a half per centum; in 1870, it was one and three-quarters per centum; in 1876, one and a half per centum, and in the present Constitution of 1879, the limit was one per centum.—(See Acts 1856, p. 68, 1870, p. 39, § 39, Acts 1876, p. 55, § 6, Constitution of 1879, Act 200.)

In 1805, subscription to railroads, certainly, was not in the legislation contemplation. The power of taxation then conferred, was to be exerted, to supply any deficiency for lighting, cleansing, paving and watering the streets, supporting the city watch, the levee, prisons, etc., work-houses, public buildings, and for such other purposes, as may be required for "police and good government." The capacity of municipal corporations, to subscribe for the stock of rail roads and to levy taxation to pay such subscription, is derived from special legislation. Taxation for railroads, is an extraordinary power. No one would look for it in the power to tax for the watch, the prisons and ordinary purposes of police and good government defined in the Acts of 1805 or of 1836, or of 1852. The power to tax for the subscription to rail roads, requires special legislation. If not conferred by the Act of 1854, the power can not be supplied by the restricted taxation, for ordinary purposes, existing at the date of the Act of 1854.

First Dillon on Municipal Corporations, 104.

For the interest, it was determined to give the tax: for the principal it was determined to allow no tax. If a stronger case of the implied prohibition of the tax, for the principal, can be conceived, how could that implication be conveyed. What more could the legislature have said; not to have said it, in so many words, to denote a purpose not to permit a tax, for the principal? The legislative intention in question here, is that

evinced by the act itself, enacted in 1854. Is it not disconnected, with the issue, of that legislative intention, then to urge, the hard condition of the bond holder, bereft of his pledge, by events long subsequent to 1854.

In the case of United States vs. Clark County, 96th United States, p. 214, already cited, three of the judges of this Court, including his Honor the Chief Justice, dissented from the decision, that notwithstanding the special provision, in the statute, the bondholder had the right to share in the general taxes, the county was authorized to levy.

The dissent was on the ground that the Act under which the bonds issued, limited taxation for their payment, of which limitation the bondholders were to be deemed apprised, and hence the bondholders had no right to resort to any other tax than that specified in this act. If that fund was insufficient, the Legislature alone could grant relief. 96th U. S., p. 218.

In the Act of 1854, the stock of the railroad and its dividends are set apart for the payment of the bonds. It spoke no uncertain language. It said to the bondholder, if you take this bond, you take it, with notice that the law gives you a tax for the interest: gives *none* for the principal, but makes other provision for the principal. If in 96th U. S., three of the judges of this Court, were of opinion that a provision for limited taxation, deemed sufficient for the bonds, excluded the bondholder from resorting to other taxation, with how much greater force must it press on the Court in this case, that the provision in the Act of 1854, for the principal of the bonds, other and different from taxation, while taxation was conferred for the interest, utterly prohibits the special taxation now claimed for these bonds.

Are the events unforeseen in 1854, to solve what provision, was intended, and what provision was not intended, is the issue here. The Act it is submitted, answers the question against the bond-holders' demand. It is held, that taxation is implied when the legislative act authorizes the bond to be issued: makes no provision for payment; and where there is a power of taxation existing in the Corporation, unless the Act contains a limitation or restriction, that excludes taxation. It is submitted, in this

instance, that the taxing power in the Charter of the City did not carry the power to tax for railroad bonds, and if it did, the limitation was clearly implied in the act of 1854, that the bondholder should not have the right to special taxation for the payment of his obligations. He must take such relief as the legislature prescribes; or await further relief. 19th Hall. p. 655; 99 U. S. 591.

So much for the limitation, excluding special taxation contained in the Act of 1854, and arising from the other provision made for payment of these bonds. But there is another limitation. Whether taxation was to be imposed at all, for these bonds of 1854, was under the Act to be submitted, to the popular vote. The measure of the tax; the species of property on which it was to be imposed, and all the details of the proposed tax, were required to be submitted to the vote of the people, on whose property the tax was proposed to be laid. No tax could be imposed without the vote. No tax was valid after that vote, beyond the assent given by the people. If the tax was to be for the bond, principal and interest, it was requisite the assent should be given. If the vote was an assent to a tax, for the principal alone, no greater tax could be imposed. If the vote in this case sanctioned a tax for interest alone, the limitation that no tax for the principal can be imposed, is obvious. It is conveyed by the terms of the statute of 1854. It was notice to the bondholder. It was notice to the world.

The legislation of Louisiana on the subject of municipal aid to railroads, was announced first in the Act of the Legislature of 1853, in the infancy of railroad development in the State. The legislature authorized municipal subscriptions to the stock of railroads, and taxation to pay for the subscription, provided an ordinance was submitted to, and voted upon favorably by the people. The ordinance was to embody provision for the amount of the subscription, the levy of a tax on landed estate, and specifying the rate of the taxation and time of payment. No subscription was valid without the vote. Act 1852, p. 128, §1. The act of 1854, followed the general statute of 1853. The ordinance of the Common Council of the city, proposing the subscription was re-

quired to be submitted to the people, and the provisions were required to be inserted to inform the people of the amount of the subscription: that the tax was to be levied annually on real estate and slaves sufficient *to pay the interest on the bonds, specifying the rate of said tax*: and that this tax for interest was not to be levied after the bonds paid dividends. These provisions, thus to be submitted to the people, were as follows in the words of the Act:

"That it shall be lawful for the Common Council of the City of New Orleans to subscribe to the stock of the New Orleans, Jackson and Great Northern Railroad Company, in the sum not exceeding two millions of dollars.

SEC. 2. *Be it further enacted, etc.*, That any ordinance, authorizing such subscriptions, shall contain the following provisions, to wit: Section 1st requires a statement of the number and amount of shares for which the city subscribes; 2d. That the subscription shall be made by the Mayor.

3. That a special tax on real estate and slaves shall be levied in January of each year, sufficient to *pay the annual interest on said bonds*, specifying the rate of said tax, which shall be collected at the same time and in the same manner as the consolidated loan tax of said city; and all ordinances, resolutions or other acts passed by said Council after the 1st day of January in each year, except an ordinance to impose said consolidated loan tax, and an ordinance to impose a tax for the *payment of interest on bonds which may be hereafter issued* for subscription to the New Orleans, Opelousas and Great Western Railroad Company, shall be null and void, unless a resolution imposing a special tax for the payment *of the interest on said bonds, issued to the railroad company herein named*, shall have been previously passed; provided that no levy of a tax for the payment of interest on said bonds shall be made after the payment of dividend of six per cent. per annum on the stock of said company held by the city, as hereafter provided, which dividends shall be applied by the city to the payment of the interest; and provided, further, that whenever the dividend on said rail road stock of the city shall amount to more than six per cent. per annum, the excess after the payment of the

interest, shall be applied to the purchase of the city bonds issued under the provisions of this Act; it being understood, that whenever dividends for less than six per cent. per annum are received on railroad stock of the city, *a tax for interest shall be levied for the difference only between the amount of said annual dividends and the amount of the annual interest.*

4th. Authorizes the issue of bonds after vote.

The limitation that the tax for these bonds, is for interest alone, results from the act itself. It is the same, as if it was written, the bond. The legislative power intended to create a tax, only to the extent, that the popular vote, sanctioned that tax. The legislation prohibited any other, because, the condition to the existence, of any tax at all, was under the act, the popular vote, upon the proposition announcing precisely, the purpose of the tax, the rate of the tax, and the kind of property to be taxed. That popular vote is the basis of the tax, and obviously constitutes its measure and limit. The Act of 1854, with the popular assent; authorized a tax on real estate and slaves. On what is the mandate of this Court to direct the tax to be enforced? Is the tax to be still confined to real estate following the Act of 1854? If the Act is followed, how can the tax be given at all? If it is to be enforced on all personal property, as well as on real estate, then it is taxation to which the popular assent was never given, and without that popular vote, the bondholder acquired no right to any tax whatever.

If the Courts of the country, were at liberty to direct other and greater taxes for the bonds, than the popoular vote sanctioned, of what avail, would be the legislation, under which this bond issued, which required the vote to determine whether the tax should be imposed, and to fix its rate and amount? It is repectfully submitted, that the tax for these bonds can only exist, by virtue of the popular vote: that the tax cannot transcend the assent of the people whose property was to be taxed; and that assent, which is made one of the conditions of the law, under which the bond issued, excludes and prohibits the tax demanded h re. The popular vote and the law, concur in sanctioning the tax for interest alone, and in prohibiting any tax for the principal. The limitation is clear.

When the issue of municipal bonds, depends on conditions to be observed by the municipal officers, it is maintained by a line of authorities, that the question of the observance of the conditions, is not allowed to be raised, after the bonds, have found their way into the market. The municipal corporation is bound. The bond holder need not not go behind the law; he can assume its conditions were performed, and he holds his bond, under the terms of the law, with all the rights the law confers.

By parity of reasoning, the bondholder here, must be deemed to have acquired his bond, under the terms of the limited taxation prescribed by the Act of 1854. The Act itself informed him, that no tax could be imposed without the popular vote. The Act informed him, that the popular vote sanctioned a tax for interest only, and none for the principal. Manifestly, no tax for the principal can be granted. There is in the Act itself, a plain limitation, which excludes the resort to taxation for the principal. To give the tax would be to disregard the limitation, which this Court has refused to do. It is not judicial legislation to compel the levy of the tax, which the legislative power has provided. If without express direction, but on the basis of implied assent (20 Wall, 661), the judiciary enforces the tax, still in theory, it is only the legislative will that the mandamus makes effective. But the judiciary is powerless to order taxation for the principal of bonds, when the law under which the bondholder holds his obligation, restricts the taxation for the payment of interest only, and denies taxation for the principal.

This case was decided in the Circuit Court, before the decision in the Ranger case, 98th U. S., p. 381. The present argument is made with all respect for that decision, but with the confidence, that this Court will not decline the re-examination upon the ground herein presented, of the question of the right to special taxation for these bonds.

The judgment of the lower Court, accords all the relief to which the Relator, is entitled by the Act of 1870, under which the judgments were recorded, and it is respectfully submitted that judgment should be affirmed.

B. F. JONAS,
HENRY C. MILLER,
of Counsel for the City of New Orleans.

Supreme Court of the United States.

No. 206.

THE UNITED STATES, EX REL., REBECCA W. WOLFF,

vs.

THE CITY OF NEW ORLEANS.

APPENDIX TO BRIEF.

Provisions of the Constitution and Laws referred to in Brief.

Extract form City Charter of 1805. Ses. Acts, 1805, pp. 55 and 56.

SEC. 6. * * * * The said Mayor and City Council (Aldermen) shall have power to raise by tax, in such a manner as to them may seem proper, upon the real and personal estate within said city, such sum or sums of money as may be necessary to supply any deficiency for the lighting, cleaning, paving and watering the streets of said city; for supporting the city watch, the levee of the river, the prisons, workhouses, and other public buildings, and for such other purposes as the police and government of the said city may require, provided, etc.

Extracts from Amendatory City Charter—Session Acts, 1836, p. 31.

SEC. 4. *Be it further enacted, etc.*, That each of said municipalities shall possess separate corporate rights, and are hereby

declared to be distinct corporations, and shall possess generally such rights, powers, and capacities, as are usually incident to municipal corporations, * * and, in general, shall possess and exercise within their respective limits all such powers, rights, and privileges, as are now possessed by the corporation of New Orleans.

Extract from Act of 1852, consolidating the municipalities.—Sess. Acts, 1852, p. 48.

SEC. 22. That upon the first organization of the Common Council of the City of New Orleans, as hereinbefore provided, the City of New Orleans, as established by this act, shall be vested with all the powers, rights, privileges and immunities incident to a municipal corporation and necessary for the proper government of the same; and upon the said organization of said Council, all the powers, rights, privileges and immunities possessed and enjoyed by the first, second and third municipalities of New Orleans, and by the general Council of the City of New Orleans, shall cease and terminate so far as regards the said municipalities and general Council, and be vested in the City of New Orleans, as established by this Act; provided, etc.

Extract from Act of 1852, requiring ordinances of the city creating debt, to provide ways and means for the payment of principal and interest. Sess. Acts, 1852, p. 53.

* * * * * * * * * and no ordinance creating a debt or loan shall be valid, unless such ordinance shall prescribe ways and means for the punctual discharge at maturity of the capital borrowed or debt incurred; and such ordinances shall not be repealed, until principal and interest of the capital borrowed or the debt incurred are fully paid and discharged.

Act of 1853. Sess. Acts, 1853, p. 234.

SECTION 1. *Be it enacted, etc.*, That the police juries of the several parishes of this State, and the constituted authorities of incorporated towns and cities in this State, shall not, here-

after, have power to contract any debt or pecuniary liability, without fully providing in the ordinance creating the debt, the means of paying the principal and interest of the debt so contracted.

SEC. 2. *Be it further enacted, etc.*, That the ordinance or enactment providing for the payment of the principal and interest of any debt created by the Board of Police, or authorities of incorporated towns or cities, shall remain in full force until the debt and interest is paid.

SEC. 3, gives power to courts to issue mandamus to compel the levy of the tax.

Act of 1854.—Sess. Acts 1854, p. 72.

SECTION. 1. Authorizes the Council of the City to subscribe to the Stock of the New Orleans, Jackson and Great Northern Rail Road.

SEC. 2, Paragraph 2, authorizes issue of bonds for stock subscribed to by city.

Paragraph 3d, That a special tax on real estate and slaves shall be levied in January of each year, sufficient to pay the annual interest on said bonds, specifying the rates of said tax, which shall be collected at the same time, and in the same manner as the consolidated loan tax of said city; and all ordinances, resolutions or other acts passed by said Council after the first day of January in each year, except an ordinance to impose said consolidated loan tax, and an ordinance to impose a tax for the payment of interest on bonds which may hereafter be issued for subscription to the New Orleans, Opelousas & Great Western Railroad Company, shall be null and void, unless a resolution imposing a special tax for the payment of the interest on said bonds issued to the railroad company herein named, shall have been previously passed; provided, that no levy of a tax for the payment of interest on said bonds shall be made after the payment of dividends of six per cent. per annum, on the stock of said company held by the city, as hereinafter provided, which dividends shall be applied by the City to the payment of the inter-

est; and, provided, further, that whenever the dividends on said railroad stock of the city shall amount to more than six per cent. per annum, the excess, after the payment of interest, shall be applied to the purchase of the City Bonds issued under the provisions of this Act; it being understood that when dividends for less than six per cent. per annum are received on the railroad stock of the city, a tax for interest shall be levied for the difference only between the amount of said annual dividends and the amount of annual interest.

SEC. 3. *Be it further enacted, etc.*, That the City Bonds issued to said railroad company, shall be received by it at par value, and said railroad company shall issue to the City of New Orleans therefor certificates of stock for an amount equal to the amount of bonds received; *and the stock of the said company, thus issued to the City of New Orleans, shall remain forever pledged for the redemption of said bonds;* provided, however, that any holder of said bonds who may desire to convert them into the capital stock of the Company to which they may have been issued, shall, on application to the Treasurer of said city, and on surrender to him of the bonds to be converted, receive from said Treasurer a transfer of the stock represented by the bonds surrendered, and said bonds shall be immediately canceled.

No. 31. AN ACT.

To adjust, regulate and provide for the bonded debt of the City of New Orleans; to authorize the exchange of bonds of the City of New Orleans for other bonds, to be issued on the plan known as the premium bond plan; to adopt and give legislative sanction to the said plan, as set out in ordinances Nos. 3130 and 3233, Administration Series of the City of New Orleans, approved on May 25 and August 31, 1875; to provide a fund to meet the semi-annual payments of the said bonds, known as premium bonds; to create a commission in the interest of creditors, and to give said commission the direction, control and management of the semi-annual allotments under said premium bond plan; to limit by contract the contracting of debt by the City of New Orleans; to limit taxation for all purposes therein, and to give relief to arrear tax-payers; to provide for the exchange of said premium bonds for other bonds in a certain contingency.

WHEREAS, The total debt, bonded and floating, of the City of New Orleans, has accumulated to an amount exceeding twenty-three millions of dollars, resulting from the occurrence of the civil war, and from reckless expenditures of public moneys;

Whereas, Under the depressing influence of the consequences of the late war, and the disasters produced by the overflows in this State, and other causes, the taxable property of the City of New Orleans has become so reduced in value as to require taxation at the rate of at least five per cent. per annum to liquidate the debt as established by the acts authorizing the various issues of the same; and

Whereas, The levying of a tax at so exorbitant a rate renders the collection impossible;

Whereas, The continuation of the levying of a tax beyond the ability of the property to pay, leads to a further destruction of the assessable property of the city, and the consequent shrinkage of the common pledge of the creditors, tending to a continuation of the present embarrassment of the city affairs, and ultimate practical bankruptcy.

Whereas, The City Council of the city of New Orleans have

adopted a plan for the liquidation of the city's indebtedness looking to the payment of the creditors in full, obtaining thereby the indulgence necessary for the public well-being and the maintenance of the public honor; therefore,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened*, That the mayor and administrators of the City of New Orleans, or such other officers, aldermen or administrators as may hereafter be ordained and established, be and they are hereby authorized and directed to exchange all recognized and valid bonds of the city of New Orleans and the late cities of Jefferson and Carrollton for bonds known as the premium bonds of the city of New Orleans, in accordance with the plan adopted by the City Council, and approved by the Mayor on the twenty-fifth May and thirty-first August, 1875. The said premium bonds shall be dated the first of September, 1875, and bear interest at the rate of five per cent. per annum, from the fifteenth of July, 1875; they shall be signed by the Mayor, the Administrator of Finance, and the Administrator of Public Accounts, as commissioners of the consolidated debt, and countersigned, when issued, by such parties as the Council have designated heretofore, or may hereafter designate, with the authorization of the supervising committee hereafter named.

SEC. 2. *Be it further enacted, etc.*, That all outstanding bonds bearing interest shall have the interest computed up to the first day of July, 1875, and thereafter the said bonds, when exchanged, shall bear interest as provided in the ordinance above ratified, which provides for the premium bonds.

SEC. 3. *Be it further enacted, etc.*, That the allotment of series and premiums which have been made by virtue of ordinance No. 3233, Administration series, adopted August 31, 1875, by the City Council, are hereby ratified and approved, and that further allotments shall take place on the fifteenth day of April and the fifteenth day of October of each year, and of premiums on the fifteenth day of January and the fifteenth day of July of each year, or on such other date as the Council may prescribe; provided that payments be not made later than

the fifteenth day of March and the fifteenth day of Septem ber of each year.

SEC. 4. *Be it further enacted, etc.*, That a permanent committee of six citizens is hereby created to represent and supervise all matters and interest under the operation of this act; they and their successors shall at all times have free access to the records of the consolidated debt, and may exercise control and supervision over the allotments and premiums, the registry and cancellation of bonds as they may deem necessary, when not in conflict with the provisions of this act; they shall fill all vacancies in their number by death, resignation or otherwise. The said committee shall, at present, be composed as follows: John G. Gaines, Thomas A. Adams, August Bohn, J. H. Oglesby, Samuel H. Kennedy and George Jonas.

SEC. 5. *Be it further enacted, etc.*, That until all the bonds are funded as herein provided it shall be the duty of the commissioners of consolidated debt and the said supervising committee, immediately after the allotment of series, to invite by sealed proposals for the exchange of old bonds for drawn premium bonds remaining in the possession of the city; such proposals shall state the lowest price at which the old bonds are offered, payable in the drawn premium bonds valued upon their face, capital and interest; the said bids, if any to be opened by the commissioners of the consolidated debt and at least one of the said supervising committee, the right to reject any or all bids being reserved to the City Council; *provided*, that when bids are rejected, further offers shall be invited, either before or after distribution of premiums for exchange of all other bonds, or for cash, as the case may be.

SEC. 6. *Be it further enacted, etc.*, That it shall be the duty of the City Council, in the month of December of each year, or in the annual budget annually adopted for the ensuing year, to include an amount sufficient to meet and pay the principal and interest of the premium bonds, together with premium included, in the several allotments of series and premiums fixed for such year by the aforesaid ordinances and this act. It shall be the duty of the Council annually to levy an equal and uniform tax on all the assessed property

within the corporate limits of the city, at a rate sufficient to provide the amount included in the budget as aforesaid, and said tax so levied shall constitute a special fund to be used for no other purpose than the payment of said bonds and interest on the said premiums comprised in said allotments, and the funds so raised shall be placed to the credit of an account to be called the premium bond account, and no money from said fund shall be paid out except on the joint authority of the commissioners of the consolidated debt. The said tax so to be raised shall be denominated the premium bond tax, and shall be separately mentioned in the tax rolls and receipts: *provided*, that the taxable power of the corporation of the City of New Orleans for all purposes, including general administration, school, police, lighting, salary of officers, court expenses, and every other purpose of government, including the sum to be raised to pay the premium bonds, as above stated, shall never, until the full, complete and final payment of the said premium bonds, exceed the rate of one and one-half per centum on the dollar of all the assessed value of property subject to taxation within the limits of the said City of New Orleans. The above limitation of the taxable power of the corporation is hereby declared to be a contract, not only with the holder of the said premium bonds, but also with all residents and taxpayers of the said city, so as to authorize any holder of said premium bonds, resident or taxpayer, to legally object to any rate of taxation in excess of the rate herein limited. It being also a part of the consideration of this contract that the City of New Orleans shall be incompetent to incur any debt or obligation, as now provided by the constitution of this State, until the final payment and extinction of the premium bonds aforesaid.

SEC. 7. *Be it further enacted, etc.*, That no tax for the payment of bonds or interest on bonds other than that authorized by the preceding sections, shall be levied either for the year 1876, or any year or years thereafter by the City of New Orleans, and that all existing laws requiring or authorizing the City Council to levy any tax whatsoever for bonds or interest on bonds, other than said premium bonds, be and the

same are hereby repealed; and it shall be hereafter incompetent for any court to mandamus the officers of said city to levy and collect any interest tax other than that provided in this act, or in case of such mandamus, by a receiver or otherwise, to direct the levy and collection on any such tax.

SEC. 8. *Be it further enacted, etc.*, That all bonds issued in exchange for others, all allotments made and all things done by the City Council or the Mayor and Administrators, previous to the passage of this act, under and by virtue of said premium bond plan and the ordinances Nos. 3130 and 3233, be and are hereby approved and ratified, and are continued in force, and are recognized as having been lawfully done pursuant to powers vested in the Council by the constitution and laws.

SEC. 9. *Be it further enacted, etc.*, That it shall be the duty of the City Council to at once prepare a statement in detail of the outstanding bonds of the city of New Orleans, to be funded as aforesaid, and whenever any of said bonds are funded for premium bonds, or offered to the city for drawn premium bonds or drawn premiums, the said bonded debt so exchanged shall be immediately canceled by the commissioners of the consolidated debt, and said supervising committee or member thereof shall prepare a statement of the bonds so canceled, to be made public.

SEC. 10. *Be it further enacted, etc.*, That no city property of any kind shall hereafter be sold or conveyed in any manner except the proceeds be applied to the reduction of the bonded or floating debt.

SEC. 11. *Be it further enacted, etc.*, That in addition to the obligation of the said city to provide annually the sum required for the execution of the premium bond plan, at least a tax of one-half of one per cent. annually, to be used in the execution of the provisions of this act; and if the product of said half of one per cent. be more than adequate for the payment of the drawn premium bonds, and the premiums as above provided, then the surplus to be used in retiring the outstanding bonds; *provided*, said half of one per cent. taxation be considered as part of the one and a half per cent. taxation to which the taxing power of the city is limited in this act; the intention of this section being to limit the city taxation to one

and one-half per cent. annually until the entire extinction of the bonded debt; to authorize the Council to levy annually out of the one and one-half per cent. taxation a sum adequate to the annual execution of said premium bond plan, and after the

SEC. 12. *Be it further enacted etc.*, That whenever under the operations of this Act the bonded debt of the City of New Orleans shall be reduced below eight millions of dollars, the creditors holding the same shall be entitled to convert the same into bonds bearing six per cent. interest per annum, payable in twenty years from their date, to be dated after the reduction aforesaid, the interest to be paid semi-annually. A sinking fund of at least two hundred thousand dollars to be provided for along with the interest by adequate annual taxation; all the limitations hereinabove provided on taxation and debt to be applicable after the issue of said bonds until payment thereof.

SEC. 13. *Be it further enacted, etc.*, That all costs, interest and charges due on arreared city taxes up to the year 1875, inclusive, be and the same are hereby remitted; that it shall be the duty of the city government, immediately after the passage of this Act, to prepare a list of the valid outstanding floating debt of said city; that after the preparation of the list of the floating debt provided in this act any of said debt shall be receivable in payment of said taxes, as follows: For all taxes due previous to the year 1865, inclusive, the said outstanding floating debt shall be received by the said city at the rate of one hundred dollars of floating debt for two hundred dollars of taxes; for all taxes due from 1866 to 1873, inclusive, the said outstanding floating debt shall be received at par; *provided* said taxes shall be paid within the year 1876.

SEC. 14. *Be it further enacted, etc.*, That all drawn premium bonds shall be receivable by the city for all dues, licences, taxes, and debts of any description at their face value and interest.

SEC. 15. *Be it further enacted, etc.*, That this Act in all its provisions and limitations be held a contract between the City of New Orleans, the holders of said premium bonds and the taxpayers or residents of said City, so as to authorize any of the contracting parties to resist any and all contracting of debt by

the said City, or increase of taxation above the rate limited in the previous provisions of this Act.

SEC. 16. *Be it further enacted, etc.*, That this Act take effect from and after its passage; that all laws or parts of laws inconsistent herewith be and the same are hereby repealed, and that all ordinances of the City of New Orleans conflicting with this Act be and are hereby repealed.

(Signed) E. D. ESTILETTE,
Speaker of the the House of Representatives.

(Signed) C. C. ANTOINE,
Lieutenant Governor and President of the Senate.

Approved March 6, 1876.

(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy:

P. G. DESLONDE,
Secretary of State.

No. 76.] AN ACT

To authorize the sale of the stock in the New Orleans, Jackson and Great Northern Railroad Company held by the State of Louisiana and the City of New Orleans.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened*, That the Governor of the State be and he is hereby directed, within ten days after the passage of this act, to sell all the stock now owned by the State in the New Orleans, Jackson and Great Northern Railroad Company, acquired by virtue of An Act entitled an act to grant the aid of the State to the New Orleans, Jackson and Great Northern Railroad Company, by subscription to the stock thereof, approved the twenty-eighth day of April, one thousand eight hundred and fifty-three.

SEC. 2. *Be it further enacted, etc.*, That the city of New Orleans be and it is hereby authorized to sell, in such manner as its Common Council may determine, the stock in the New Orleans, Jackson and Great Northern Railroad Company, acquired by virtue of an act of the Legislature of Louisiana, approved March 15, 1854, entitled "An Act for the subscription by the city of New Orleans to the stock of the New Orleans, Jackson and Great Northern Railroad Company."

SEC. 3. *Be it further enacted, etc.*, That the purchaser of the State stock shall execute bond, with good and solvent sureties, in the sum of three hundred thousand dollars, in favor of the Governor of the State of Louisiana, conditioned to maintain the pledge in favor of the bondholders of the bonds issued by the State by virtue of the aforesaid act of April 28, 1853, who may desire to convert said bonds into the stock of said company provided for by section two of said act.

SEC. 4. *Be it further enacted, etc.*, That the purchaser of the city stock shall execute bond, with good and solvent sureties, in the sum of five hundred thousand dollars, in favor of the Mayor of the city, conditioned to maintain the pledge in favor of the bondholders of the bonds issued by the city of New

Article 209, Constitution of 1879:

The State tax on property for all purposes whatever, including expenses of government, schools, levees and interest, shall not exceed in any one year six mills on the dollar of its assessed valuation, if the ordinance regarding the bonded debt of the State is adopted and ratified by the people; and if said ordinance is not adopted and ratified by the people, said State tax for all purposes aforesaid, shall not exceed in any one year five mills on the dollar of the assessed valuation of the property; and no parish or municipal tax for all purposes whatever, shall exceed ten mills on the dollar of valuation; *provided*, etc.

Orleans, by virtue of the aforesaid act of March 15, 1854, who may desire to convert said bonds into the stock of said company, provided for by section three of said act.

SEC. 5. *Be it further enacted, etc.*, That the bonds executed by the purchaser of the State and city stock shall remain in force for the term of one year only, at the end of which time the sureties thereon may be released by showing on the part of the purchaser of the State stock a certificate from the Secretary of State that no opposition thereto has been filed in his office; and by the purchaser of the city stock producing a certificate from the Mayor of the city that no opposition thereto has been filed in his office.

SEC. 6. *Be it further enacted, etc*, That the Governor and City Council are hereby authorized to make all necessary transfers on the books of the New Orleans, Jackson and Great Northern Railroad Company, in favor of the purchaser of the stock held by the State and city respectively; and said purchaser is hereby authorized to vote as any other stockholder in said company, according to the number of shares held by him, that is, one vote for each share.

SEC. 7. *Be it further enacted, etc.*, That all laws or parts of laws in conflict herewith, and particularly section seven, act approved March 15, 1854, authorizing the appointment of directors by the city of New Orleans in said New Orleans, Jackson and Great Northern Railroad Company, be and the same are hereby repealed.

SEC. 8. *Be it further enacted, etc.*, That this act take effect from and after its passage.

(Signed) MORTIMER CARR,
Speaker of the House of Representatives.

(Signed) OSCAR J. DUNN,
Lieutenant Governor and President of the Senate.

Approved April 1, 1870.

(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy:

GEO. E. BOVEE,
Secretary of State.